



Senate

General Assembly

File No. 639

January Session, 2009

Substitute Senate Bill No. 1153

Senate, April 15, 2009

The Committee on Government Administration and Elections reported through SEN. SLOSSBERG of the 14th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE CAPITOL AREA DISTRICT HEATING AND COOLING SYSTEM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) The Commissioner of
2 Public Works, on behalf of the state, may purchase from TEN
3 Companies, Inc., in accordance with the Asset Purchase Agreement
4 dated November 4, 2008, by and among the state, acting by and
5 through the Commissioner of Public Works, and TEN Companies, Inc.,
6 which Asset Purchase Agreement is hereby ratified and approved, the
7 district heating and cooling system that provides heating and cooling
8 service to state facilities within the Capitol District and to other
9 nonstate facilities, as listed in the Asset Purchase Agreement dated
10 November 4, 2008, and which is known as the Capitol Area System,
11 including, but not limited to, all assets and property relative to or
12 necessary for the operation of said system, as described in the Asset
13 Purchase Agreement dated November 4, 2008. The commissioner may
14 assume all vendor contracts, customer contracts, supplier agreements,

15 and third-party contracts with regard to said system. The
16 commissioner may undertake any obligation and enter into any
17 agreement to accomplish any transaction that is necessary to carry out
18 the provisions of this section or said Asset Purchase Agreement,
19 including, but not limited to, the grant or acceptance of any release set
20 forth in said Asset Purchase Agreement.

21 (b) To the extent any provision in an agreement executed or
22 assumed by the commissioner pursuant to subsection (a) of this section
23 may be interpreted as waiving the sovereign immunity of the state,
24 including, without limitation, indemnification provisions, such
25 provision is effective and enforceable against the state solely in
26 accordance with its specific terms. Nothing in this subsection shall be
27 construed as a waiver of the sovereign immunity of the state in any
28 other context.

29 (c) In order to operate the Capitol Area System, the commissioner
30 may: (1) Furnish, from plants located in the city of Hartford, heat or air
31 conditioning, or both, by means of steam, heated or chilled water or
32 other medium; (2) lay and maintain mains, pipes or other conduits; (3)
33 erect such other fixtures as are, or may be, necessary or convenient in
34 and on the streets, highways and public grounds of said city, for the
35 purpose of carrying steam, heated or chilled water or other medium
36 from such plants to the location to be served and returning the same;
37 and (4) lease to one or more corporations formed or specially chartered
38 for the purpose of furnishing heat or air conditioning, or both, one or
39 more of such plants or distribution systems owned by it and
40 constructed or adapted for either or both such purposes.

41 (d) Notwithstanding any provision of the general statutes, the
42 commissioner may perform all obligations of the state relating to or
43 arising from any agreement between the state and TEN Companies,
44 Inc., including, but not limited to, acting on behalf of the Joint
45 Committee on Legislative Management, the Judicial Department, and
46 any state agency that owns, operates or occupies a building that
47 receives services from TEN Companies, Inc. on the Capitol Area

48 System.

49 (e) The Commissioner of Public Works may (1) enter into contracts
50 with third parties for the procurement of energy products and services
51 or for the operation and maintenance of, and repairs and
52 improvements to, the Capitol Area System; (2) provide energy
53 products and services, as produced from said system or distributed by
54 said system, to any buildings owned by, or leased to, the state or any
55 instrumentality of the state; (3) sell energy products and services, as
56 produced from said system or distributed by said system, to the
57 owners or tenants of buildings not owned by the state; (4) occupy and
58 use rights-of-way necessary to own, maintain, repair, improve and
59 operate said system in and on the streets, highways and public
60 grounds of the city of Hartford, on all property owned by the state and
61 on property where the system is located, and to serve public and
62 private end-use customers; (5) lay and maintain mains, pipes or other
63 conduits, and erect such other fixtures as are, or may be, necessary or
64 convenient in and on the streets, highways and public grounds of said
65 city, for the purpose of carrying energy products to the location to be
66 served and returning the same; and (6) enter into contracts with third
67 parties for the procurement of other products and services, and
68 provide or sell other products or services to the state or to the owners
69 or tenants of buildings not owned by the state, that are being
70 produced, provided or distributed through said system, or any part
71 thereof, prior to, or as of, the effective date of this section.

72 (f) Notwithstanding any provision of the general statutes, the
73 Commissioner of Public Works may: (1) Grant easements with respect
74 to land owned by the state in connection with the operation of the
75 Capitol Area System, subject to the approval of the agency having
76 supervision of the care and control of such land and the State
77 Properties Review Board; (2) acquire easements with respect to land
78 not owned by the state in connection with said system, subject to the
79 approval of the State Properties Review Board; (3) enter into leases for
80 any type of space or facility necessary to meet the needs of operating
81 said system, subject to the approval of the State Properties Review

82 Board; and (4) when the General Assembly is not in session, the
83 commissioner may, subject to the provisions of section 4b-23 of the
84 general statutes, purchase or acquire for the state any land, or interest
85 therein, if such action is necessary for the operation of said system. No
86 easement granted pursuant to subdivision (1) of this section shall be
87 for the disposal or storage of radioactive or hazardous waste materials.
88 The commissioner shall provide notice of any easement granted
89 pursuant to subdivision (1) of this section to the chief elected official of
90 the municipality and the members of the General Assembly
91 representing the municipality, in which such land is located.

92 (g) The Commissioner of Public Works may establish and
93 administer an account to be known as the Public Works Heating and
94 Cooling Energy Revolving Account, which shall be used for: (1) The
95 deposit of receipts from the sale of energy products and services to
96 state agencies or to the owners or tenants of buildings not owned by
97 the state, and (2) for the payment of expenses related to the operation,
98 maintenance, repair and improvement of the Capitol Area System. The
99 commissioner may expend funds necessary for all reasonable direct
100 expenses related to said account.

101 (h) The Commissioner of Public Works, with the approval of the
102 Secretary of the Office of Policy and Management as to the method
103 used to calculate rates and the type of expenses included for repairs
104 and maintenance, shall include the following in the expenses invoiced
105 to, and collected from, each state agency and owner or tenant of the
106 buildings on the Capitol Area System that are not owned by the state,
107 to the extent not prohibited by contracts in effect as of November 4,
108 2008: (1) A pro-rata share of all costs of acquiring the system,
109 including, but not limited to, all costs for legal and consultant services;
110 (2) a pro-rata share of the cost of such energy products or services,
111 whether produced by the state or purchased from third parties; (3) a
112 pro-rata share of any and all costs of operating, maintaining and
113 repairing said system, including, but not limited to, the cost of services
114 provided by vendors and the cost of equipment; (4) a pro-rata share of
115 an amount determined to be necessary for long-term capital

116 improvements or replacement, which amount shall be specifically
117 identified in the Public Works Heating and Cooling Energy Revolving
118 Account, and allocated for long-term capital improvements or
119 replacement; (5) a pro-rata share of the Department of Public Works'
120 personnel costs related to the operation, maintenance, repair and
121 improvement of the Capitol Area System; and (6) a pro-rata share of
122 the cost of other products or services incurred and permitted by this
123 section. Not more than forty-five days after receipt of such proposal
124 from the commissioner, the Secretary of the Office of Policy and
125 Management shall approve or disapprove of the proposed method
126 used to calculate rates and the type of expenses included. If the
127 secretary fails to act on the proposal during this period, the
128 commissioner's proposal shall be deemed to have been approved.

129 (i) Nothing in this section shall be construed to limit the use of the
130 Capitol Area System by the state to its use or functional capacity as of
131 the date of its purchase by the state.

132 (j) Except as expressly required by the provisions of this section, the
133 acquisition of the Capitol Area System by the Commissioner of Public
134 Works, and any transaction related to such acquisition, shall not be
135 subject to any other review, approval or authorization by any other
136 state agency, board, department or instrumentality and shall not be
137 subject to any otherwise applicable sales or conveyance tax or taxes.

138 (k) Nothing in this section shall be construed to prohibit the state
139 from reselling the Capitol Area System to a third party if it is
140 determined that such resale is in the best interest of the state.

141 Sec. 2. Section 3 of number 7 of the special acts of 1961, as amended
142 by special act 97-1, is amended to read as follows (*Effective from*
143 *passage*):

144 (a) Said corporation is authorized and empowered, either directly or
145 through the agency of its parent, a subsidiary or an affiliate: To
146 furnish, from plants located in the city of Hartford, heat or air
147 conditioning, or both, by means of steam, heated or chilled water or

148 other medium; to lay and maintain mains, pipes or other conduits, and
149 to erect such other fixtures as are or may be necessary or convenient in
150 and on the streets, highways and public grounds of said city, for the
151 purpose of carrying steam, heated or chilled water or other medium
152 from such plants to the location to be served and returning the same;
153 and to lease to one or more corporations formed under the general law
154 or specially chartered for the purpose of furnishing heat or air
155 conditioning, or both, one or more of such plants or distribution
156 systems, or both, owned by it and constructed or adapted for either or
157 both of such purposes.

158 (b) Said corporation or its parent or successor may sell to the state
159 the district heating and cooling system, known as the Capitol Area
160 System, that provides heating and cooling energy products or services
161 to buildings owned by the state and to privately owned buildings.
162 Such sale shall include, but not be limited to, all assets and property
163 relative to or necessary for the operation of said system, as described in
164 the Asset Purchase Agreement dated November 4, 2008, relating to
165 such sale.

166 Sec. 3. (*Effective from passage*) (a) For the purpose of the sale provided
167 for in section 1 of this act, the purchase price for the Capitol Area
168 System and the assets and property of TEN Companies, Inc., related to
169 said system, as set forth in the Asset Purchase Agreement between
170 TEN Companies, Inc., and the State of Connecticut dated November 4,
171 2008, shall be ten million six hundred thousand dollars, which
172 purchase price includes a credit in the amount of five million dollars
173 provided by TEN Companies, Inc., to the state in consideration of the
174 settlement of litigation. The provisions of this subsection shall be
175 deemed to constitute compliance, to the extent applicable, with the
176 provisions of section 3-125a of the general statutes.

177 (b) The State Bond Commission may authorize the issuance of
178 bonds of the state in one or more series and in a principal amount in
179 the aggregate not exceeding ten million six hundred thousand dollars.
180 The proceeds of the sale of said bonds shall be used for the purpose of

181 acquiring the Capitol Area System, including all assets and property
 182 relative to or necessary for the operation of said system, as described in
 183 the Asset Purchase Agreement dated November 4, 2008.

184 Sec. 4. (*Effective from passage*) The State Bond Commission shall have
 185 the power to authorize the issuance of bonds of the state in one or
 186 more series and in a principal amount in the aggregate not exceeding
 187 one million dollars for the transactional costs related to the purchase of
 188 the Capitol Area System, as provided in section 1 of this act, including,
 189 but not limited to, the state's insurance costs, the state's legal fees,
 190 reimbursement to TEN Companies, Inc. for prepaid property taxes, a
 191 reasonable amount for start-up funding for the Public Works Heating
 192 and Cooling Energy Revolving Account, as established in section 1 of
 193 this act, and for the purchase and installation of pipe necessary for the
 194 operation of the Capitol Area System, including, but not limited to, the
 195 cost of pipe and its installation as the interconnection between the
 196 supply and return lines of the Capitol Area System at or near the point
 197 of interconnection between the Capitol Area System and TEN
 198 Companies, Inc.'s other district energy system located in the
 199 downtown area of the city of Hartford.

200 Sec. 5. (NEW) (*Effective from passage*) The State Bond Commission
 201 shall have power to authorize the issuance of bonds of the state in one
 202 or more series and in a principal amount in the aggregate not
 203 exceeding five million dollars for the purchase and installation of
 204 additional equipment not part of the sale of the Capitol Area System
 205 provided for under section 1 of this act, or for assets or property
 206 necessary for the improvement or the operation of the Capitol Area
 207 System, or for providing services to state and nonstate owned
 208 buildings not connected to, or receiving services from, the system as of
 209 the effective date of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section

Sec. 2	<i>from passage</i>	Number 7 of the special acts of 1961, Sec. 3
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	New section

GAE *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Treasurer, Debt Serv.	GF - Cost	See Below	See Below
Pub. Works, Dept.	GF - Savings	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill authorizes \$16.6 million in General Obligation (GO) bonds to the Department of Public Works (DPW) for costs associated with purchasing a heating and cooling loop in Hartford. Of the \$16.6 million, \$10.6 million will be used to purchase the loop and associated assets, \$1 million will be used to establish a revolving fund to manage operation of the loop and \$5 million will be used to purchase additional or replacement equipment and to connect additional state buildings to the loop in the future. The total General Fund debt service cost for principal and interest payments on \$16.6 million over 20 years assuming a 5.0% interest rate, is \$25.3 million. The first year that the state will experience costs associated with the bonds depends on when they are allocated through the State Bond Commission and when the funds are expended.

The loop is currently owned by the TEN Companies, Inc. and delivers steam, hot water, and chilled water to heat and cool certain state-owned buildings¹ and privately-owned buildings². The bill is expected to result in a General Fund operating budget savings for

¹ The state-owned buildings include 18-20 Trinity Street, 30 Trinity Street, 75 Elm Street, 79 Elm Street, 10 Clinton Street 300 Capitol Avenue, 360 Broad Street, 231 Capitol Avenue, 25 Sigourney Street, and 410-474 Capitol Avenue.

² The privately owned buildings include 166 Capitol Avenue, 28-32 Laurel Street, 24 Park Place and 21 Oak Street.

energy costs at state-owned buildings under the care and control of DPW because the estimated cost to operate the loop is less than the projected cost of the state's contract with the loop's current owner. Based on a consultant's study, the state could save \$200,000 per year beginning in FY 10.

The bill is not expected to have any impact on DPW's operating budget because the cost of operating the loop will be paid out of the Heating and Cooling Energy Revolving Account, which is established in the bill. The account will be used for: (1) closing costs associated with the purchase, (2) the deposit of receipts from the sale of energy products to the privately-owned buildings, and (3) to pay the expenses of the system including the purchase of energy products and the repair and maintenance of the loop.

The Out Years

The General Fund debt service cost identified will continue for the 20 year life of the GO bonds. The General Fund operating budget savings for energy costs is expected to continue into the future subject to inflation.

Sources: Department of Public Works

OLR Bill Analysis**sSB 1153*****AN ACT CONCERNING THE CAPITOL AREA DISTRICT HEATING AND COOLING SYSTEM.*****SUMMARY:**

This bill authorizes the Department of Public Works (DPW) to purchase, from the TEN Companies, Inc., the system that heats and cools state and non-state buildings in the capitol district. Among the state buildings this system serves are the Capitol, Legislative Office Building, Supreme Court building, and various executive branch office buildings. The bill sets the purchase price for the system and the assets and property of TEN Companies, Inc. related to the system, as set forth in the agreement, at \$10.6 million.

The bill amends the charter of the Hartford Steam Company (TEN's predecessor) to allow the company or its parent or successor to sell the system to the state. The sale must at least include all assets and property related to or needed for the system's operation, as described in the Asset Purchase Agreement dated November 4, 2008, relating to the sale. The bill ratifies this agreement and requires DPW to comply with its terms. To the extent any provision in the agreement may be interpreted as waiving the state's sovereign immunity, such as indemnification provisions, these provisions are effective and enforceable against the state solely in accordance with their specific terms. The bill's provisions may not be construed to waive the state's sovereign immunity in any other context.

The bill gives the DPW commissioner broad powers regarding the system. These include entering into contracts for the system's operation, providing energy services to state and non-state customers, granting easements with respect to state land in connection with the system's operation, and administering an account (created by the bill)

for paying the system's expenses and receiving its revenues.

The bill authorizes the commissioner to (1) assume all vendor and customer contracts, supplier agreements, and third party contracts concerning the system and (2) undertake any obligation and enter into any agreement to accomplish any transaction necessary to carry out the agreement. These include acting on behalf of the Joint Committee on Legislative Management; the Judicial Department; and any state agency that owns, operates or occupies a building served by the TEN Companies, Inc. that is on the system.

The bill does not limit the state's use of the system to its own use or functional capacity as of the date the state purchases the system. It also does not preclude the state from reselling the system to a third party if it is determined that this is in the state's best interest.

The bill authorizes the State Bond Commission to issue up to (1) \$10.6 million of bonds to acquire the system, including all assets and property covered by the agreement; (2) \$1 million in bonds for certain transactional costs, including funding for the account; and (3) \$5 million for the purchase and installation of additional equipment or certain other purposes.

EFFECTIVE DATE: Upon passage

PURCHASE AUTHORIZATION

The bill authorizes the DPW commissioner to purchase the "Capitol Area System" in accordance with the Asset Purchase Agreement dated November 4, 2008. This is the district heating and cooling system that provides heating and cooling service to state facilities in the Capitol District and to other non-state buildings, as listed in the agreement. The bill allows the commissioner to assume all vendor contracts, customer contracts, supplier agreements, and third-party contracts regarding the system. It allows him to undertake any obligation and enter into any agreement to accomplish any transaction necessary to carry out the bill's provisions or the agreement. Among other things, these include the grant or acceptance of any release set forth in the

agreement.

Except as expressly required by the bill, the acquisition of the system and any transaction related to the acquisition is not subject to (1) any other review, approval, or authorization by any other state agency, board, department, or instrumentality and (2) any otherwise applicable sales or conveyance taxes.

The bill sets the purchase price for the system and the assets and property of TEN Companies, Inc. related to the system, as set forth in the agreement, at \$10.6 million. This includes a \$5 million credit to the state provided by TEN Companies, Inc., in consideration of the litigation settlement. These provisions constitute compliance, to the extent applicable, with the provisions of the law that require legislative approval of certain agreements (CGS § 3-125a).

COMMISSIONER'S POWERS

System Operation

In order to operate the system, the commissioner may (1) furnish heat or air conditioning from plants located in Hartford by means of steam, heated or chilled water, or other media; (2) lay and maintain mains, pipes, or other conduits; (3) erect other necessary or convenient fixtures in and on Hartford streets, highways, and public grounds to carry steam, heated or chilled water, or other media from the plants to the location to be served and returning these forms of energy; and (4) lease to one or more corporations formed or specially chartered for the purpose of furnishing heat or air conditioning, one or more of these plants or distribution systems it owns that are built or adapted for these purposes.

The bill allows the commissioner to:

1. contract with third parties to procure energy products and services or for system operations, maintenance, repairs, and improvements;
2. provide energy products and services, produced from the

- system or distributed by it, to any buildings owned by, or leased to, the state or any state instrumentality;
3. sell energy products and services produced from the system or distributed by it, to the owners or tenants of non-state buildings;
 4. occupy and use rights-of-way needed to own, maintain, repair, improve, and operate the system in and on Hartford streets, highways and public grounds, on all property owned by the state, and on property where the system is located, and to serve public and private end-use customers;
 5. lay and maintain mains, pipes, or other conduits, and erect other necessary and convenient fixtures in and on Hartford streets, highways and public grounds to carry energy products to the location to be served and returning these products; and
 6. enter into contracts with third parties to procure other products and services, and provide or sell other products or services to the state or to the owners or tenants of non-state buildings, that are being produced, provided, or distributed through the system on or before the bill's passage date.

Easements and Land Acquisition

The bill allows the commissioner, notwithstanding any provision of the statutes, to (1) grant easements with respect to state land in connection with the system's operation, subject to the approval of the agency responsible for the care and control of the land and the State Properties Review Board (SPRB); (2) acquire easements with respect to land not owned by the state in connection with the system, subject to SPRB approval; (3) lease any type of space or facility necessary to meet the system's operating needs, subject to SPRB approval; and (4) when the General Assembly is not in session, subject to the state facility plan, purchase or acquire for the state any land, or interest in land, if this action is needed for the operation of the system.

The bill prohibits the commissioner from obtaining an easement for

the disposal or storage of radioactive or hazardous waste materials. The commissioner must notify (1) the chief elected official of the municipality where any easement granted under the bill is located and (2) the members of the General Assembly representing this municipality.

Public Works Heating and Cooling Energy Revolving Account

The bill allows the commissioner to establish and administer this account. It must be used to (1) deposit receipts from the sale of energy products and services to state agencies or to the owners or tenants of non-state buildings and (2) pay expenses related to the system's operation, maintenance, repair, and improvement. The commissioner may expend funds needed for all reasonable direct expenses related to the account.

RATE SETTING

The bill requires the commissioner to include in the expenses invoiced to and collected from each entity served by the system, to the extent not prohibited by contracts in effect as of November 4, 2008, its pro-rata share of (1) all costs of acquiring the system, at least including those for legal and consultant services; (2) the cost of the energy products or services, whether produced by the state or purchased from third parties; (3) any and all costs of operating, maintaining, and repairing the system, at least including the cost of services provided by vendors and the cost of equipment; (4) an amount needed for long-term capital improvements or replacement, which must be specifically identified in the account described above and allocated for long-term capital improvements or replacement; (5) DPW's personnel costs related to the system's operation, maintenance, repair, and improvement; and (6) the cost of other products or services incurred and permitted by the bill.

The commissioner must obtain the approval of the secretary of the Office of Policy and Management (OPM) regarding the method used to calculate rates and the type of expenses included for repairs and maintenance. Within 45 days after receiving the proposal from the

commissioner, the OPM secretary must approve or disapprove of the proposed rate calculation method and the type of expenses included. If the secretary fails to act on the proposal during this period, the commissioner's proposal is considered approved.

BONDING

The bill authorizes the State Bond Commission to issue \$10.6 million of bonds to acquire the system, including all assets and property necessary for its operation, as described in the Asset Purchase Agreement. This purchase price includes a \$5 million credit.

It authorizes the State Bond Commission to issue up to \$1 million in bonds for the transactional costs related to the purchase of the system. These at least include the state's insurance costs and legal fees, reimbursement to TEN Companies, Inc. for prepaid property taxes, a reasonable amount for start-up funding for the Public Works Heating and Cooling Energy Revolving Account, and for the purchase and installation of pipe necessary for the system's operation. The last item includes the cost of pipe and its installation as the interconnection between the supply and return lines of the system at or near the point of interconnection between the system and TEN Companies, Inc.'s other district energy system located in downtown Hartford.

The bill authorizes the State Bond Commission to issue up to \$5 million in bonds for (1) the purchase and installation of additional equipment not part of the sale of the system; (2) assets or property necessary for the improvement or the operation of the system; or (3) providing services to state and non-state owned buildings not connected to, or receiving services from, the system as of the bill's passage date.

COMMITTEE ACTION

Government Administration and Elections Committee

Joint Favorable Substitute

Yea 14 Nay 0 (03/27/2009)